



Comptroller General  
of the United States

Washington, D.C. 20548

*Mrs. McAuliffe*

556254

## Decision

**Matter of:** Square 537 Associates Limited Partnership

**File:** B-249403.2

**Date:** April 21, 1994

Neil I. Levy, Esq., and Niccolo N. Donzella, Esq., Kilpatrick & Cody, for the protester.  
Richard J. Conway, Esq., Dickstein, Shapiro & Morin, for Greenebaum & Rose, an interested party.  
Robert W. Schlattman, Esq., General Services Administration, for the agency.  
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest challenging evaluation of protester's proposal is denied where protester was not prejudiced by apparently flawed evaluation; even if protester received maximum points available under certain contested areas of evaluation, record supports reasonableness of award determination.
2. Contention that agency did not hold meaningful discussions regarding exterior of protester's proposed building is denied where agency found proposal acceptable in this area and only downgraded proposal slightly for minor concerns regarding aesthetics and proposed entrance and pathways.

### DECISION

Square 537 Associates Limited Partnership protests the award of a contract to Capitol Hill Associates Limited Partnership under solicitation for offers (SFO) No. 90-061, issued by the General Services Administration (GSA) for the lease of approximately 425,000 net usable square feet of office and special type space in Washington, D.C., for use by the

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Federal Energy Regulatory Commission (FERC).<sup>1</sup> Square 537 contends that the agency unfairly applied unstated criteria in evaluating the proposals and failed to conduct meaningful discussions with the protester.

We deny the protest.

The SFO, issued on April 30, 1992, and amended six times, anticipates a 20-year lease term with an option to renew the lease for a 10-year period; the SFO also includes an option to purchase the building at the end of the renewal option period. The SFO states that award will be made on the basis of the offer "most advantageous to the government," with price less important than technical and other factors. The technical evaluation factors were provided in amendment No. 1 to the SFO, in descending order of importance, as:

1. Building Efficiency
  - Contiguity of Space
  - Floor size
  - Stacking Plan
  - Column Spacing
  - Ratio of Primary Circulation to Net Space
2. Building Design
  - Building Exterior
  - Building Interior
  - Energy Efficiency
  - Exterior Window Spacing to Interior Areas
3. Quality and Security of Neighborhood
  - Quality of Surroundings
  - Access to Local Amenities
  - Access to Relevant Government Facilities
4. Proximity to Transportation Systems
  - Distance to a Metrorail Station
  - Distance to Amtrak & Marc Rail
5. Offeror Qualifications
  - Prior Performance on a Similar Project
  - The Offeror Management Plan

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<sup>1</sup>The lease contemplated under the SFO is to provide space for FERC's headquarters and consolidate FERC's operations currently located in three separate locations.

The SFO states that price evaluation will be based on the "net present value" of the annual rent per square foot, and explains how that figure will be calculated for price evaluation purposes. The agency's source selection plan for the evaluators' use contains rating sheets that detail how the various SFO evaluation criteria are to be applied.

Offers were received from eight firms. Square 537 offered a building called Plaza of the Patriots in Southwest Washington, D.C. Square 537's proposal explained that the building it proposed to build for FERC's headquarters was "Phase I" of a 3-phase building development project where a future building was contemplated to be built beside the FERC building sharing a wall with the FERC building. Capitol Hill offered a building called Union Center Plaza III located in Northwest Washington, D.C. next to one of FERC's current locations.

The protester was requested during discussions of March 10, 1992, to provide additional information about its proposed emergency generator, noise criteria for conference rooms and offices, management plan, ownership of the site, location of certain escalators, and the construction/design materials for the lobby. During verbal discussions, the protester was told of the agency's concerns regarding certain proposed prices and of FERC's desire to be a sole tenant in a building.

Best and final offers (BAFO) were received by May 28, 1993. The cover letter to Square 537's BAFO stated that:

"The ownership is offering a first class building designed exclusively for [FERC]. No other tenant will share the office space with FERC . . . .<sup>2</sup> The only other relationship to a future building that would abut the FERC building on its western side is the parking facility that will encompass the entire project footprint . . . ."

The BAFOs were evaluated and the point scores assigned to the proposals by each of the five evaluators were averaged. Capitol Hill's BAFO received a technical score of 92.2 and presented a price (i.e., net present value per net usable square foot) of \$18.08. Square 537's BAFO received a technical score of 80.2 and offered a price of \$17.60 (2.7 percent lower than the awardee's price).

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<sup>2</sup>Retail spaces which were contemplated by the SFO and included in both the protester's and the awardee's proposals were not considered by GSA in its determination of whether a building proposed multiple tenants or constituted a shared facility.

Under the contiguity of space subfactor (worth 15 points) of the building efficiency factor, Capitol Hill's proposal received the maximum 15 points and Square 537's proposal received 11. The evaluators concluded that since Square 537's proposed FERC building would share a "party wall" with a future building, Square 537's proposal offered space for FERC not as a single tenant in a separate building, but as a single tenant in a "single shared facility," raising security concerns.

Under the floor size subfactor (worth 5 points) of the building efficiency factor, three of the five evaluators calculated the protester's floor size as 113,700 square feet (the sum of the floor size of the offered FERC building and the future structure abutting that building). Two other evaluators calculated the protester's proposal as offering the desired floor size, approximately 59,000 square feet, in one building (i.e., the proposed "Phase I" building) to house FERC's headquarters since the future abutting building was not proposed to meet the SFO's space requirements. Capitol Hill's proposal received the maximum 5 points available; Square 537's proposal received 3.4 points.

As to the building exterior subfactor (worth 10 points) of the building design factor, Capitol Hill's proposal received 9 points and Square 537's proposal received 5.4. The evaluators' scoring sheets note that the protester's proposal was downgraded slightly under the building exterior subfactor due to the evaluators' opinions as to its aesthetics and possible confusion regarding the employee entrance and because pedestrian and vehicular pathways intersected.

The agency conducted a cost/technical tradeoff between Square 537's and Capitol Hill's proposals. In net present value terms, over the 20-year lease term, Capitol Hill's proposal (with a net present value for 20 years at \$153,680,000) was evaluated as costing the government approximately \$4,080,000 more than Square 537's proposal; the protester's proposal was calculated to have a net present value for 20 years at \$149,600,000. In its tradeoff calculations, GSA considered, in addition to the technical evaluation results and the net present value of the proposals, various additional administrative costs that would be incurred in moving FERC to the protester's proposed Southwest Washington, D.C. location. GSA determined that such additional administrative costs would lessen slightly the price differential between the offers.

The agency concluded that the benefits of Capitol Hill's building outweighed the additional cost. As a result, the agency awarded a 20-year lease to Capitol Hill on December 1, 1993. The protester, debriefed by the agency

on December 8, filed this protest with our Office on December 9. We have been advised by the agency of its determination that it is in the government's best interest to continue performance of the contract.

#### TECHNICAL EVALUATION

Square 537 contends that the technical evaluation of its proposal was flawed due to the improper use of unstated evaluation criteria. Specifically, the protester contends that the agency unreasonably concluded that a proposed future building abutting the FERC building rendered its proposed building a shared facility since it offered to build a building to meet FERC's space requirements without the need for space in the possible future abutting building. Square 537 contends that the SFO did not define "single" or "shared" facility and that the agency's consideration of security concerns in evaluating building efficiency were not evidenced by the stated evaluation subfactors. Rather, Square 537 contends, contiguity of space typically implies consideration of proposed office placement and adjacencies within a building and since its proposed stacking plan received the maximum points available and matched the SFO's ideal stacking plan, GSA should not have had any concerns with the protester's proposed building's contiguity of space. In this regard, Square 537 also contends that the evaluation of its proposed floor size was flawed because three evaluators added the floor size of the possible future abutting building which was not offered to meet the SFO's requirements.<sup>3</sup>

GSA argues that its evaluation of the "party wall" was reasonable. The agency reports, however, that even if there was a technical deficiency in the agency's evaluation of the party wall design under the contiguity of space and floor size subfactors and the protester's proposal instead

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<sup>3</sup>Square 537 also contends that the evaluators improperly downgraded its proposal 2 points under the prior performance on a similar project subfactor of the offeror qualifications factor. The protester states that its proposal should have received the maximum score (4 points) due to its construction subcontractor's substantial experience. The record shows, however, that GSA reasonably considered Square 537's experience aside from its subcontractor (both the protester and the awardee proposed the same construction subcontractor) and the protester did not have as significant experience and favorable references as did the awardee (which received the maximum 4 points available).

received the maximum points available under the two subfactors (which the agency states would not be warranted on the merits of the proposal), its award determination would still be the same.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320. Prejudice, however, is an essential element of a viable protest. See Propper Mfg. Co., Inc., B-245366, Dec. 30, 1992, 92-1 CPD ¶ 14.<sup>4</sup>

We do not agree with the agency that the party wall design is reasonably encompassed by the contiguity of space subfactor and that the agency could reasonably downgrade the protester for this concern under this subfactor. Contiguity of space typically relates to office placement and adjacencies and, as a measure of building efficiency here, we think the subfactor more reasonably applies to the evaluation of the interior space of the building.<sup>5</sup> Additionally, since the future abutting building was not offered by the protester to meet the SFO's space requirements, we think it was not reasonable for three of the agency's evaluators to calculate floor size to include space in the abutting structure.

Nonetheless, the agency reports that it has reviewed the evaluation of proposals based upon Square 537 receiving the maximum points available under these two subfactors (where perfect scores under these criteria would only add 5.6 points to the protester's overall technical proposal score), and that the source selection board has determined that there would be no change to the award decision. Since the difference in the prices offered by these two competitors is slight (2.7 percent), and the addition of points in these

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<sup>4</sup>Square 537's BAFO was also downgraded slightly under the following subfactors: access to local amenities, distance to Amtrak & Marc Rail, and management plan. Our review of the record provides no reason to question the evaluation of Square 537's proposal or the adequacy of the agency's discussions under these subfactors since the first two items involve quantitative distances not subject to change, and the protester's management plan--a subject of discussions--dealt primarily with personnel and did not provide adequate information regarding project management and operation.

<sup>5</sup>Since the party wall affects the FERC building's exterior wall, it would be more appropriately evaluated under the building exterior subfactor.

evaluation areas to Square 537's proposal score (even if it received perfect scores) would be minimal compared to the overall technical superiority of Capitol Hill's proposal under several of the other evaluation factors, the record provides no basis for us to question the reasonableness of the agency's award determination. The protester has not shown a reasonable possibility of prejudice from the alleged evaluation improprieties. We therefore deny this protest basis.<sup>6</sup>

#### MEANINGFUL DISCUSSIONS

Square 537 next contends that the agency failed to conduct meaningful discussions with it regarding the agency's concerns about its proposal. Besides contiguity of space and floor size (discussed above), Square 537 contends that the agency failed to raise during discussions concerns relating to the protester's proposed building exterior regarding its aesthetics, entrances, and pathways. The protester states that it could have changed its proposed building, illustrated by architectural drawings included in its proposal, to satisfy the agency's concerns. (Square 537's proposal received a score of 5.4 out of 10 points available for building exterior; the awardee's proposal received a score of 9 points for this criterion.)

In negotiated procurements, contracting officers generally are required to conduct discussions with all offerors whose proposals are within the competitive range. Federal Acquisition Regulation (FAR) § 15.610. However, an agency is not required to discuss every element of a proposal that receives less than the maximum point score available. Rather, the requirement for meaningful discussions is met where each offeror is advised of the weaknesses, excesses, or deficiencies in its proposal, the correction of which would be necessary for the offeror to have a reasonable chance for an award, and by affording the offeror the opportunity to satisfy the government's requirements through the submission of revised proposals. FAR § 15.610(c)(2), (5); Cecil Pruitt, Jr., Trustee, B-251705.2, June 10, 1993, 93-1 CPD ¶ 449.

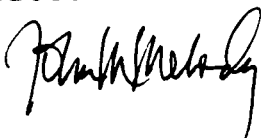
GSA's failure to raise during discussions the specific reasons for not assigning the protester's building exterior a perfect score is an insufficient basis here to conclude that GSA failed to conduct meaningful discussions with the firm. The primary reason the protester's proposal lost 3.6 points under this 10-point subfactor was the evaluators'

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<sup>6</sup>As to Square 537's contentions of intentional agency bias against the protester's location, such speculation alone is insufficient to constitute a valid basis of protest.

opinions as to its proposed building's aesthetics. Although Square 537's proposal was fully acceptable under this building exterior subfactor, the evaluators liked Capitol Hill's proposed building exterior more. For instance, one evaluation comment was that the protester's building was plain, whereas Capitol Hill's building offered the prominence considered more appropriate for FERC's headquarters. These findings represent subjective judgments within the discretion of the evaluators and the record provides no reason for our Office to question the reasonableness of the determinations in this regard. As for the mention in the evaluation record concerning possible confusion about which entrance was for employee use, or possible safety concerns due to pedestrian and vehicular pathways intersecting, the record shows that the concerns referred to were, at best, only minor weaknesses in the proposal and that the proposal was only downgraded slightly in this regard. Accordingly, the agency's failure to discuss these matters with the protester did not result in a failure to conduct meaningful discussions with the firm.

The protest is denied.

  
For Robert P. Murphy  
Acting General Counsel